Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1335

VILLAGE OF SCHAUMBURG,

Petitioner,

vs.

CITIZENS FOR A BETTER ENVIRONMENT,
AN ILLINOIS NOT-FOR-PROFIT CORPORATION, ET AL.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Respondents pray that the requested Writ of Certiorari not issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on December 1, 1978, which affirmed the judgment of the United States District Court for the Northern District of Illinois, entered on February 17, 1978.

OPINIONS BELOW

The decision of the Circuit Court of Appeals for the Seventh Circuit, is set forth in Petitioner's Appendix A, and published at 590 F. 2d 220 (1978). That decision affirmed the ruling of the District Court, set forth on Petitioner's Appendix B.

QUESTIONS PRESENTED

1. Whether the Seventh Circuit Court of Appeals was correct in affirming the judgment of the District Court that a provision of an ordinance and the Municipal Code of Schaumburg, which prohibited an organization claiming substantial door-to-door advocacy to promote a healthful environment from soliciting funds in that municipality, violated the First Amendment to the Constitution of the United States?

2. Whether a municipality may impose substantial limitations on expenditures for door-to-door political expression as a condition precedent to solicitation of funds in that municipality?

REASONS FOR REFUSING CERTIORARI

1. The Court of Appeals for the Seventh Circuit was correct in its judgment that the ordinance in question is unconstitutional because it violated the First Amendment.

2. The Court below distinguished its decision from the decision of the Fifth Circuit in *National Foundation* v. *City of Fort Worth*, and the decisions are not in conflict.

STATEMENT OF THE CASE

The complaint, answer and the Schaumburg ordinance relating to this case are contained in the Appendix as Appendix A, B, and C respectively.

This action was commenced in 1976 by Citizens for a Better Environment (hereinafter "CBE") and certain named officers of CBE against 19 municipalities in the Chicago area, including the Village of Schaumburg. CBE challenged the validity of various municipal ordinances which were claimed to regulate CBE's door-to-door activity. The complaint alleged that CBE was an Illinois not-for-profit corporation whose purpose was to protect, enhance and maintain the Illinois environment. Incident to that

purpose CBE alleged that it employs canvassers who go door-to-door to distribute literature on environmental topics, answer questions of an environmental nature when posed, solicit contributions to financially support the organization and its programs, and receive residents' grievances and complaints of an environmental nature so that CBE may offer assistance in their evaluation and redress.

CBE alleged that the defendant Village of Schaumburg had enacted an ordinance which regulated door-to-door requests for money and that the ordinance was being used to prohibit CBE's door-to-door activity in Schaumburg.

The Village of Schaumburg, in its answer, admitted that it had enacted an ordinance, Chapter 22, which regulates peddlers and solicitors [Chapter 22 has two parts: the first part, Ordinance 1103, Municipal Code Section 22-6 to 22-18, is entitled For Profit Peddlers and Solicitors (hereinafter "the commercial ordinance"); the second part, Ordinance 1052, Municipal Code Section 22-19 to 22-24, is entitled Charitable Organizations (hereinafter "the charitable ordinance").] The Village stated that "the commercial ordinance" did not purport to regulate organizations of the character of CBE, but that CBE was subject to "the charitable ordinance". The Schaumburg answer admitted that CBE had made applications for a permit under the ordinance and that the permit applications had been denied. Further, Schaumburg stated that Chapter 22 required a permit prior to the solicitation of money in Schaumburg and that CBE or anyone violating the ordinance would be prosecuted.

CBE moved the District Court for summary judgment, claiming Chapter 22, and specifically Section 22-20(g) of "the charitable ordinance" were unconstitutional as a violation of the First Amendment. Section 22-20(g) requires that 75% of the proceeds of solicitation go to charitable program; it specifically lists various expenses that can not be considered charitable program. Summary Judgment was granted (the District Court opinion is contained in Schaumburg's Petition for Writ of

Certiorari as Appendix B), with the District Court holding Section 22-20(g) unconstitutional and void on its face. The Court noted that CBE was able and willing to comply with the other provisions of "the charitable ordinance".

The Village of Schaumburg appealed the District Court ruling to the United States Court of Appeals for the Seventh Circuit. That Court affirmed the District Court decision that Section 22-20(g) was unconstitutional:

> "We do not decide the reasonableness of the 75 percent requirement as applied to solicitation by the more traditional charitable organizations. However, for the reasons stated below, the requirement is on its face unreasonable when applied to an organization which by its nature allegedly devotes a large portion of its efforts to information gathering and promotion of its objectives, and where its paid solicitors necessarily combine solicitation with other primary activities of the organization.
>
> * * * * *
>
> "The 75 percent *might* be valid where solicitors represent themselves as mere conduits for contributions. But the requirement as it exists in the Village Code also applies where it is made clear that the contributions will be used for reasonable salaries of those who will gather and disseminate information relevant to the organization's purpose." Slip Opinion pp. 10-11.

The Seventh Circuit distinguished its holding from the Fifth Circuit's holding by stating:

> "Our conclusion is not inconsistent with the Fifth Circuit's decision in *Nat'l Foundation* v. *City of Ft. Worth*, 415 F. 2d 41 (5th Cir. 1969), cert denied, 396 U.S. 1040 (1970). That decision upheld an ordinance which limited the cost of solicitation of charitable contributions to 20 percent of total receipts. However, the ordinance also allowed an organization which did not meet the requirement to show that its percentage was not unreasonable. The court recognized that within the broad class of charitable organizations a rigid percentage requirement would be difficult to justify, stating:

> 'A fixed percentage limitation on the costs of solicitation might be undesirable and inapplicable if applied to all types of charitable organizations. What may be proper in one situation may not be so in other situations. The ordinance before us does not imply a fixed standard but permits a determination of reasonableness of the ratio between the cost of solicitation and the amount collected.'
>
> "Section 22-20(g) provides no similar flexibility.
>
> "Accordingly, the decision of the district court is affirmed." Slip Opinion pp. 11-12.

The Village of Schaumburg petitioned this Court for a Writ of Certiorari.

ARGUMENT SUPPORTING REASONS FOR DENYING CERTIORARI

Both the District Court and the Court of Appeals below agreed, without dissent, that summary disposition was proper, that the ordinance was facially invalid, and that no conflict exists.

A. Summary Disposition Is Proper Where an Ordinance Is Challenged as Facially Invalid Under the First Amendment and the Undisputed Facts Show a Justiciable Controversy Exists

Schaumburg averred in the District Court that the type of organization CBE purports to be is subject to the provisions of "the charitable ordinance"[1] (Defendants Answer ¶ 10), which precludes soliciting contributions without a permit (Defendants Answer ¶ 37). The parties agreed that CBE

1. The Village has been inconsistent about the function and application of "the charitable ordinance" and "the commercial ordinance". In answer to the amended complaint Schaumburg stated:

> ". . . (the commercial ordinance) which was attached to CBE's original complaint does not purport to regulate a charitable organizations (sic) or organizations of the character of CBE." Defendants Answer ¶ 11.

(Footnote continued on next page.)

made applications for that permit (¶'s 14-15) and that those applications had been denied (¶ 16). Further, the parties agreed that CBE or anyone would be prosecuted for violating "the charitable ordinance" (¶ 23). Thus, a specific present harm—denial of free speech—and a threat of future specific harm—prosecution—both exist. A facial challenge is proper where there is a "claim of specific present objective harm or a threat of specific future harm." *Laird* v. *Tatum*, 408 U. S. 1, 13-14 (1972). As noted by the Court of Appeals for the Seventh Circuit in the opinion below ". . . a controversy exists, and CBE has the personal stake in the outcome required by this Court in *Grandco Corp.* v. *Rockford*, (sic) 536 F. 2d 197, 207 (7th Cir. 1976)." Slip Opinion at 5.

It is a well settled principle that if a justiciable controversy exists in a case challenging a statute on the ground that it is overbroad and in violation of the First Amendment, a factual determination of the nature of the plaintiff and the effect of the statute on that particular plaintiff is unnecessary. "In the First Amendment context, the Court has permitted attacks on overly

(Footnote continued from preceding page.)

For the first time on appeal to the Seventh Circuit Schaumburg stated:

> "There is of course no bar against CBE or anyone else who does not meet the 75% requirement by virtue of the ordinance in question. Anyone who does not meet the 75% requirement is simply subject to the solicitation ordinance for commercial activities." Schaumburg Reply Brief, Pg. 7. See also Slip Opinion Pg. 9 Note 6.

Now before this Court Schaumburg argues:

> "This case presents a simple question as to whether a municipality may, in the interest of protecting the public from fraud, crime and undue annoyance, *prohibit door-to-door solicitation for funds* on private property by an allegedly charitable organization . . ." Schaumburg Petition for Writ of Certiorari, Pg. 27 [Emphasis added]

But, Schaumburg also argues:

> "It must be emphasized that the Village does not seek a total ban on such solicitations. It has reasonable regulations relating to solicitation for commercial purposes which are not at issue here." Schaumburg Petition for Writ of Certiorari, P. 7

broad statutes without requiring that the person making the attack demonstrate that in fact his specific conduct was protected." *Bates* v. *State Bar of Arizona*, 433 U. S. 350, 380 (1977).[2] The present case would provide no further elucidation of this principle of law. A factual determination of the actual activities of CBE would be superfluous since it is the "purported" activities that bring the ordinance into effect.

B. The Schaumburg Ordinance Regulating Charitable Solicitations Is Facially Invalid Under the First Amendment for Overbreadth and Vagueness

The Schaumburg ordinance in question in this case, "the charitable ordinance", requires a permit prior to soliciting contributions for any organization within the scope of the ordinance. The ordinance covers "[a]ny benevolent, philanthropic, patriotic, not-for-profit, or eleemosynary group, association or corporation, or such organization purporting to be such which solicits and collects funds for . . . [a]ny charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose." Schaumburg Municipal code Section 22-19.

"Any . . . not-for-profit . . . group . . . which solicits and collects funds for . . . any benevolent purpose,"[3] presumably includes "Public Interest" groups with goals such as: improvement of the environment, racial equality, consumer protection or other socio-political ends. Groups with these goals frequently engage in door-to-door activity such as distribution of pamphlets, dialogue with residents, information dissemination, and incidental requests for financial assistance or paid membership. Public advocacy for such goals has been held by the Court to

2. See also, *Dombrowski* v. *Pfister*, 380 U. S. 479, 486 (1965); *Grayned* v. *City of Rockford*, 408 U. S. 104, 114 (1972); *Gooding* v. *Wilson*, 405 U. S. 518, 520-521 (1972); *Coates* v. *City of Cincinnati*, 402 U. S. 611, 616 (1971); *NAACP* v. *Button*, 371 U. S. 415, 432 (1963); *Thornhill* v. *Alabama*, 310 U. S. 88, 97-98 (1940).

3. In the lower Court the Village stated that, ". . . no solicitation to obtain donations of money may take place without first having

(Footnote continued on next page.)

be political expression,[4] *N. A. A. C. P.* v. *Button*, 371 U. S. 415 (1963), whose protection is not diminished because of an incidental request for financial support. *Cantwell* v. *Connecticut*, 310 U. S. 296, at 307 (1940), *Bates* v. *State Bar of Arizona*, *supra*. Schaumburg admits that such group exists and that they "could" come within purview of the ordinance. Slip Opinion P. 9. Indeed, this very uncertainty concerning the applicability of the ordinance to those groups most likely to engage in door-to-door political discussion underscores the statutory vagueness. If Village counsel is uncertain, how would an applicant know?

(Footnote continued from preceding page.)

obtained a permit . . ." Defendants Answer ¶ 37. Hence, it would appear that any solicitation is the standard, not any solicitation for a "charitable" purpose.

4. Since 1970 Congress has passed substantial legislation in the area of environmental control; this legislation and its effect on our society are controversial. Congress has specifically provided for public input into governmental control of the environment under this legislation by both individuals and organizations.

> "The Congress . . . declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and *private organizations*, to use all practicable means and measures . . . to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony . . ." National Environmental Policy Act, 42 U. S. C. § 4321 [emphasis added].

Congress provided citizen suits to sharpen the response of government officials. See 42 U. S. C. § 2619 (Toxic Substances Control Act); 16 U. S. C. § 1540(g) (Endangered Species Act); 33 U. S. C. § 1413(g) (Marine Protection, Research and Sanctuaries Act); 33 U. S. C. § 1365 (Clean Water Act); 33 U. S. C. § 1515 (Deepwater Port Act); 42 U. S. C. § 300j-8 (Safe Drinking Water Act); 42 U. S. C. § 1857(h)(2) (Clean Air Act); 42 U. S. C. § 4911 (Noise Control Act); 42 U. S. C. § 6305 (Energy Policy and Conservation Act); 42 U. S. C. § 6972 (Resource Conservation and Recovery Act) and 15 U. S. C. § 2073 (Consumer Product Safety Act).

Congress has also "provided for, assisted and encouraged" public participation in the development, revision, and enforcement of regulations and standards under such laws. See 33 U. S. C. § 1351 (Clean Water Act); 42 U. S. C. § 6974 (Resource Conservation and Recovery Act); 42 U. S. C. § 7401, *et seq.* (Clean Air Act).

In order for an organization to effectively represent the "public interest," it must speak to the public it represents.

For such groups there is no distinction at the door between the advocacy and the solicitation, if indeed such distinction is ever possible. As the Court noted in *Thomas* v. *Collins*, 323 U. S. 516, at 534-535 (1945):

> "These rights of assembly and discussion are protected by the First Amendment. Whatever would restrict them, without sufficient occasion, would infringe its safeguards. The occasion was clearly protected. The speech was an essential part of the occasion, unless all meaning and purpose were to be taken from it. And the invitations, both general and particular, were parts of the speech, inseparable incidents of the occasion and of all that was said or done.
>
> * * * * *
>
> "Furthermore, whether words intended and designed to fall short of invitation would miss that mark is a question both of intent and of effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation. In short, the supposedly clear-cut distinction between discussion laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning."

Regulation of the "solicitation" necessarily regulates the expression and association of which it is an inseparable and incidental part. The Schaumburg ordinance claims to regulate only "solicitation", but by its broad scope it also regulates political expression door-to-door.

"The charitable ordinance" requires, in those provisions before this Court, satisfactory proof that at least 75% of the proceeds of solicitation go to non-designated "program"; conversely, it requires that no more than 25% go to designated expenses:

> "(g) Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization. For such pur-

poses, the following items shall not be deemed to be used for the charitable purpose of the organization, to wit:

(1) Salaries or commissions paid to solicitors,

(2) Administrative expenses of the organization, including but not limited to, salaries, attorneys' fees, rents, telephone, advertising expenses, contributions to other organizations and persons, except as a charitable contribution and related expenses incurred as administrative or overhead items.

"For the purpose of satisfying the requirements of subparagraph (g), the organization shall submit a certified audit of the last full year of operations, indicating the distribution of funds collected by the organization, or such other comparable evidence as may demonstrate the fact that at least seventy-five per cent of the funds collected are utilized directly and solely for the charitable purpose of the organization. (Ord. No. 1052, § 3.)" Schaumburg Municipal Code, Section 22-20(g).

The ordinance places a limit on the amount of money (25%) an organization may spend on pay for its door-to-door representative or the administrative expenses incident to that door-to-door activity.[5] In some organizations, such as CBE, the same person advocates the political cause door-to-door and asks for money. For those organizations the present ordinance is a direct limitation on expenditures for political expression at the door.[6] Those organizations which emphasize advocacy and minimize request-

5. The Seventh Circuit was greatly concerned about what would be considered "administrative expenses" under 22-20(g). They concluded all expenses of an organization would be excluded. Slip Opinion pp. 8-9. CBE believes this provision gives the Village substantial discretion to bar an organization by excluding any desired expenses as not "charitable program". However, even in its most restrictive sense, this provision would exclude all expenses associated with the door-to-door activity.

6. The Court noted in *Buckley* v. *Valeo*, 424 U. S. 1, 20 at n. 20, that a full page advertisement in a metropolitan daily paper ran nearly $7,000.00 in 1975. This may preclude many small groups from presenting their viewpoint to the public in any manner but door-to-door.

ing money may find that their "expenses" exceed their donations. Or, unpopular causes may find their contributions barely cover the administrative expenses associated with spreading their message to the public. For those groups this ordinance is a complete bar.

This Court has recognized the necessity of financial expenditures for political expression, and the effect of limitations on those expenditures. In *Buckley* v. *Valeo*, 424 U. S. 1 at 19 (1976) the Court stated:

> "A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs." (Footnote omitted.)

Limitations on expenditures for political expression were stricken as violative of the First Amendment in that case, *Buckley, supra* at 57, regardless of their effects:

> "The First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise. In the free society ordained by our Constitution it is not the government, but the people —individually as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign."

Here, the Village of Schaumburg has determined that spending more than 25% of the organization's funding on expenses for door-to-door political advocacy is not only wasteful and unwise; it is the basis for a prior restraint of speech in Schaumburg.

Government does not have the power to command that "charitable organizations" stick to the business of "charitable purpose" when addressing the public, especially in the area of political

expression. As the Court noted in *First National Bank of Boston* v. *Belotti,* 435 U. S. 765, 785 (1978):

> "If a legislature may direct business corporations to 'stick to business', it also may limit other corporations-religious, charitable, or civic-to their respective "businesses" when addressing the public. Such power in government to channel the expression of views is unacceptable under the First Amendment." (Footnote omitted)

C. There Is No Conflict Among the Circuits on the Measure of Protection Accorded Door-to-Door Public Advocacy for Social Change

Petitioners argue that the decision below is in conflict with a decision from the Fifth Circuit. The Fifth Circuit case involved a conceptually different ordinance and an entirely different type of organization which did not purport to engage in political expression. No conflict exists because of the difference in factual situations and the limited scope of that Court's utterance.

The Fifth Circuit case involved an organization that conducted the annual "March of Dimes" fund drive. As described in the District Court opinion, *National Foundation* v. *Fort Worth,* 307 F. Supp. 177, 181-2 (D. C. Tex. 1967), this fund drive was solely to raise money, with no dissemination of ideas, information or advocacy. The case predates this Court's holdings in *Bigelow* v. *Virginia,* 421 U. S. 809 (1975) (notion of unprotected commercial speech all but passed from the scene), and *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council,* 425 U. S. 7, 48 (1976) (constitutional protection for the flow of commercial information of interest to the public).

The percentage limitation on expenditures for charitable purposes in the Fort Worth ordinance provided for due process appeal and hearing to show that the percentage limitation ought not apply to a specific organization. The Schaumburg ordinance provides no due process appeal procedures, nor allows any other deviation from the percentage limitation as defined by the ordi-

nance. The Fifth Circuit found it unnecessary to invoke a First Amendment standard of scrutiny but cautioned that:

> "a fixed percentage limitation on the cost of solicitation might be undesirable and inappropriate if applied to *all types of charitable organizations.* What may be proper in one situation may not be so in other situations. The ordinance before us does not imply a fixed standard . . ." [Emphasis added] *National Foundation* v. *Fort Worth,* 415 F. 2d 41, 46 (5th Cir. 1969), *Cert. denied* 396 U. S. 1040 (1970).

Nothing in *National Foundation, supra,* or *Hynes* v. *Mayor of Oradell,* 425 U. S. 610 (1976), supports a limitation on expenditures for door-to-door activity by charitable organizations engaged in political expression and advocacy for social change.

While the Fifth Circuit has not expressly ruled on the constitutionality of such an expense limitation on door-to-door political advocacy, a district court in the Fourth Circuit has. In *Carolina Action* v. *Pickard,* 420 F. Supp. 310 (W. D. N. C. 1976), an ordinance denying a permit to canvass if the cost of collection exceeded 25 percent of the amount raised was held unconstitutionally overbroad and vague as applied to an organization's canvass devoted to political purposes. The developing law in the Tenth Circuit also seems to be in accord. See *Swearson* v. *Meyers,* 455 F. Supp. 88 (D. C., Kan., 1978).

The Circuits appear to agree that a fixed percentage limitation which restrains the door-to-door activity of organizations engaging in political advocacy for social change is invalid. Neither the decision below nor the Fifth Circuit decision conflict with this principle. The Seventh Circuit recognized that certain activities within the scope of "the charitable ordinance", door-to-door advocacy for social change, deserve substantial protection. Appropriately they invoked the scrutiny the First Amendment requires of such prior restraints.

CONCLUSION

The solicitation ordinance in this case extends, in a vague and overbroad manner, into the area of door-to-door advocacy for social change; within that area it imposes a substantial restriction on expenditures for political expression in direct contravention of *Buckley* v. *Valeo, supra,* and *Bellotti, supra.* Groups that desire to seek public support, but do not meet the restrictive limitations on expenditures, are precluded from their door-to-door activity even where residents desire to hear the message. This goes far beyond reasonable time, place and manner regulation. For the foregoing reasons the respondents respectfully submit that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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March 1979

APPENDIX A

UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

CITIZENS FOR A BETTER ENVIRONMENT, An Illinois Not-for-Profit Corporation, LARRY A. HOELLWARTH, *Plaintiffs,*

vs.

VILLAGE OF SCHAUMBURG, ILLINOIS, MARTIN J. CONROY, HERBERT AIGNER, AL LARSON, NELS HORNSTROM, RAYMOND LEBEAU, JAMES ROGERS and EDWARD OLSEN, *Defendants.*

No. 76 C 470

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

Now come the Plaintiffs, Citizens for a Better Government, an Illinois Not-for-Profit Corporation, and Larry A. Hoellwarth, by their Attorney, Michael R. Berman, and complaining of the Defendants, Village of Schaumburg, Illinois, Martin J. Conroy, Herbert Aigner, Al Larson, Nels Hornstrom, Raymond Lebeau, James Rogers, and Edward Olsen.

JURISDICTION

1. Jurisdiction of this Court is invoked under Section 1 of the Fourteenth Amendment to the Constitution of the United

States, Title 28, United States Code, Sections 1331, 1343(3) and 1651, and Title 42 United States Code, Sections 1983 and 1988.

2. The amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000) exclusive of interest and costs.

PARTIES

3. The Plaintiff, Citizens for a Better Environment (herein referred to as "CBE") is an Illinois Not-for-Profit Corporation with its principal place of business in the City of Chicago, County of Cook and State of Illinois. It was organized for the purpose, among others, of protecting, maintaining, and enhancing the quality of the Illinois environment. It is registered and in good standing with the Illinois Attorney General's Charitable Trust Division and has been afforded tax-exempt (as well as tax-deductible) status by the United States Internal Revenue Service. That incident to its purpose, CBE employs "canvassers" who are engaged in door-to-door activity in the Chicago metropolitan area, endeavoring to distribute literature on environmental topics and answer questions of an environmental nature when posed; solicit contributions to financially support the organization and its programs; receive grievances and complaints of an environmental nature regarding which CBE may afford assistance in the evaluation and redress of these grievances and complaints. This canvassing procedure is also an effective means of making the public aware of CBE as a source of assistance in the event that problems of an environmental nature arise in the future.

4. That the Plaintiff, Larry A. Hoellwarth, is an employee of CBE, and he devotes his full time to those duties. He is compensated in the form of wages for such service, which he depends upon for his livelihood. His duties include the direct responsibility for the canvassing operations of CBE, and his reputation depends, at least in part, upon the success of these canvassing operations.

5. That the Defendant, Village of Schaumburg, Illinois, is a Corporation, duly created pursuant to Illinois law.

6. That the Defendants, Herbert Aigner, Al Larson, Nels Hornstrom, Raymond Lebeau, James Rogers, and Edward Olsen (hereinafter referred to as "The Schaumburg Village Board"), are the duly elected trustees of the Village of Schaumburg, Illinois.

7. That the Defendant, Martin J. Conroy, is the duly appointed Chief of Police for the Village of Schaumburg, Illinois.

Count I

FACTS

8. That the Defendant, Village of Schaumburg, Illinois, has enacted a solicitation ordinance on March 12, 1974, No. 1052, attached as Exhibit A and made a part hereof, that requires nonprofit organizations to submit a written application to the Village Clerk in order to receive a permit.

9. That this ordinance was issued to CBE on November 15, 1977, by the Village Clerk's Office with the instruction that this is the ordinance under which nonprofit organizations must register.

10. That the defendants filed with their answer a section of the village code of Schaumburg, Chapter 22, §§ 22-1 - 22-24, attached as Exhibit B and made a part hereof, which defendants stated is in full force and effect.

11. That Chapter 22 of the Schaumburg code consists of Ordinance 1103 which was attached to CBE's original complaint and ordinance 1052 which was referred to in CBE's original complaint, and the only differences between the ordinances and their codification are insignificant.

12. That under ordinance 1052 and/or the code, Chapter 22, §§ 22-1 - 22-24, a charitable organization must apply to

the village clerk for a permit before it is allowed to solicit contributions door-to-door.

13. That the Village Board issues the permit if all requirements of the ordinance and/or the code have been met.

14. That CBE has been requesting permission to canvass from the Village of Schaumburg since April 1973.

15. That Schaumburg received a final request for solicitation dated January 22, 1976.

16. That all requests have been denied.

17. That notwithstanding the said registration ordinance and the Village code, the Schaumburg Village Board, acting without legal authority, has arbitrarily and capriciously denied Plaintiffs' application for a permit.

18. Plaintiffs have applied for such permits although they have not and do not admit the validity of requiring permits for the operation of a charitable organization nor for the exercise of the constitutionally protected freedoms, privileges and immunities.

19. That such refusal by Schaumburg was without good cause shown and without affording Plaintiffs herein a hearing thereon.

20. That each ordinance, and specifically Section Three of Ordinance 1052 and Section 22-20 of Chapter 22 are so strict, odious and vague in requiring unreasonable information and criteria—including "Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization"—as to be in violation of Plaintiffs' constitutional rights.

21. That on information and belief the Schaumburg Village Board does not uniformly enforce the 75% test and has granted permits to other charities who have failed to meet the test.

22. That on information and belief, other charitable organizations are not made to submit the unreasonable information demanded by the ordinance and/or the code, and therefore Plaintiffs' rights to equal protection of the laws and to due process have been violated.

23. That by reason of such refusal, Plaintiffs are under imminent threat of arrest and prosecution by the Chief of Police of the Village of Schaumburg, Illinois, should Plaintiffs seek to exercise their rights to canvass.

24. That by reason of their official positions, said Defendants, and each of them were cloaked with authority over Plaintiffs herein and under which authority, performed all of the acts or omissions herein alleged.

25. That at all times heretofore alleged, the Defendants, and each of them were acting pursuant to codes, statutes, regulations, ordinances, customs and usages of the State of Illinois, their respective municipalities, and under Color of Law.

26. That by reason of the acts or omissions of the Defendants as aforesaid alleged, the Plaintiffs were and are further being subjected to a deprivation of their right to free speech, to freedom of association, and to access to the Courts, thus depriving them of equal protection of the Laws and further depriving them of life, liberty and property without due process of Law, and further depriving individual Plaintiffs of rights, privileges and immunities, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

27. That the Plaintiffs' interests have been, and will continue to be irreparably harmed, adversely affected and aggrieved by the foregoing unlawful acts of the Defendants unless relief issues from this Court.

28. That Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray:

A. That this Honorable Court enter a declaratory judgment declaring the action of the Trustees of the Village of Schaumburg, Illinois, denying CBE's request to conduct a solicitation drive in the Village of Schaumburg, Illinois, to be without authority, illegal, void, and in volation of Plaintiffs' rights.

B. That this Honorable Court issue a temporary and permanent injunction against the Defendants, and each of them prohibiting the harassment of the Plaintiffs and their solicitors

during or in furtherance of their lawful rights to solicit and canvass in the Village of Schaumburg, Illinois.

C. That this Honorable Court determine the local solicitation ordinance unconstitutional or unconstitutional as applied to Plaintiffs, and that the Court declare that the actions of the Defendants in enforcing such law or ordinance are unconstitutional and that the Defendants, and each of them, be permanently enjoined from such enforcement.

D. That such injunction issue without bond for good cause shown.

E. For such other and further relief as this Court deems just and reasonable under the circumstances.

Count II

29. Plaintiffs reallege Paragraphs Eight (8) and Nine (9) of Count I.

30. That ordinance no. 1052, enacted on March 12, 1974, attached as Exhibit A and made a part hereof, purports to prohibit the seeking to obtain donations of money by a person without first having obtained a permit issued at the arbitrary discretion of the Schaumburg Village Board.

31. That said ordinance, and specifically Section Three thereof, is so strict, odious, and vague in requiring unreasonable information and criteria—including "Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitation will be used directly for the charitable purpose of the organization" —as to be violation of Plaintiffs' constitutional rights.

32. That such ordinance and the threat of enforcement constitutes a prior restraint upon, and an unreasonable interference with the exercise of Plaintiffs' rights to freedom of speech, freedom of press, freedom of association and rights to access to the courts as guaranteed them by the First Amendment to the Constitution of the United States and as applied by the Fourteenth Amendment to the Constitution of the United States.

33. That the Plaintiffs are under imminent threat of arrest and prosecution by the Chief of Police of the Village of Schaumburg should Plaintiffs seek to exercise their right to canvass.

34. That the Plaintiffs' interests have been, and will continue to be irreparably harmed, adversely affected and aggrieved by the foregoing unlawful ordinance unless relief issue from the Court.

35. That Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray:

A. That this Honorable Court issue a temporary and permanent injunction against the Defendants, and each of them, prohibiting the harassment of Plaintiffs and their solicitors during or in furtherance of their lawful rights to solicit and canvass in the Village of Schaumburg, Illinois.

B. This this Honorable Court determine the local solicitation ordinance unconstitutional or unconstitutional as applied to Plaintiffs, and that the Court declare that the actions of the Defendants in enforcing such law or ordinance are unconstitutional, and that the Defendants, and each of them, be permanently enjoined from such enforcement.

C. That such injunction issue without bond for good cause shown.

D. For such other and further relief as this Court deems just.

Count III

36. Plaintiffs reallege Paragraph Ten (10) of Count I.

37. That Chapter 22, §§ 22-1 - 22-24, of its Village Code attached as Exhibit B and made a part hereof, purports to prohibit the seeking to obtain donations of money by a person without first having obtained a permit issued at the arbitrary discretion of the Schaumburg Village Board.

38. That said ordinance, and specifically Section Three thereof, is so strict, odious, and vague in requiring unreasonable information and criteria—including "Satisfactory proof that at

least seventy-five per cent of the proceeds of such solicitation will be used directly for the charitable purpose of the organization" —as to be in violation of Plaintiff's constitutional rights.

39. That such ordinance and the threat of enforcement constitutes a prior restraint upon, and an unreasonable interference with the exercise of Plaintiffs' rights to freedom of speech, freedom of press, freedom of association and rights to access to the courts as guaranteed them by the First Amendment to the Constitution of the United States and as applied by the Fourteenth Amendment to the Constitution of the United States.

40. That the Plaintiffs are under imminent threat of arrest and prosecution by the Chief of Police of the Village of Schaumburg should Plaintiffs seek to exercise their right to canvass.

41. That the Plaintiffs' interests have been, and will continue to be irreparably harmed, adversely affected and aggrieved by the foregoing unlawful ordinance unless relief issue from the Court.

42. That Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray:

A. That this Honorable Court issue a temporary and permanent injunction against the Defendants, and each of them, prohibiting the harassment of Plaintiffs and their solicitors during or in furtherance of their lawful rights to solicit and canvass in the Village of Schaumburg, Illinois.

B. That this Honorable Court determine the local solicitation ordinance unconstitutional or unconstitutional as applied to Plaintiffs, and that the Court declare that the actions of the Defendants in enforcing such law or ordinance are unconstitutional, and that the Defendants, and each of them, be permanently enjoined from such enforcement.

C. That such injunction issue without bond for good cause shown.

D. For such other and further relief as this Court deems just.

CITIZENS FOR A BETTER ENVIRONMENT
By: /s/ MICHAEL R. BERMAN
Michael R. Berman
Its Attorney

Dated: December 2, 1977

MICHAEL R. BERMAN, ESQ.
59 East Van Buren, Suite 2610
Chicago, Illinois 60605
(312) 939-1530

APPENDIX B

UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

CITIZENS FOR A BETTER ENVIRONMENT, an Illinois Not-for-Profit Corporation, LARRY A. HOELLWARTH,
Plaintiffs,
vs.
VILLAGE OF SCHAUMBURG, ILLINOIS, MARTIN J. CONROY, HERBERT AIGNER, AL LARSON, NELS HORNSTROM, RAYMOND LEBEAU, JAMES ROGERS, and EDWARD OLSON,
Defendants.

No. 76 C 470

ANSWER TO AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

Now Comes the Defendants, Village of Schaumburg, Martin J. Conroy, Herber Aigner, Al Larson, Nels Hornstrom, Raymond Lebeau, James Rogers, and Edward Olsen, Defendants herein by Jack M. Siegel, their attorney, and in answer to the Amended Complaint for Declaratory Judgment and Injunction heretofore filed herein, says as follows:

JURISDICTION

1. In answer to paragraph 1. Defendants deny that this Court has jurisdiction under Section 1 of the Fourteenth Amend-

ment to the Constitution of the United States, Title 28 United States Code, Sections 1331, 1343(3) and 1651, and Title 42 United States Code, Sections 1983 and 1988. Defendants further aver that there are no substantial federal questions involved herein and that there is no violation of the Fourteenth Amendment or any of the statutes enumerated in paragraph 1. by virtue of the ordinances of the Village of Schaumburg or the acts of the Defendants herein.

2. Defendants deny that the amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000) exclusive of interest and costs and aver that there are no allegations in said Amended Complaint to support said allegation of jurisdiction.

PARTIES

3. In answer to paragraph 3. the Defendants say they have no knowledge sufficient to form a belief as to the truth of the allegations therein contained and further aver that the facts alleged in said paragraph 3. even if true, would not be relevant or material to the issues in this cause with the exception that the Defendants state on information and belief that the CBE employs "canvassers" who solicit funds for the purported purposes of the organization.

4. In answer to paragraph 4. of said Amended Complaint Defendants say that they have no knowledge sufficient to form a belief as to the truth of said allegations and neither admit nor deny said allegations but demand strict proof thereof.

5. In answer to paragraph 5. Defendants admit that the Village of Schaumburg is a municipal corporation and further avers that it is a home-rule municipality under the Constitution of the State of Illinois.

6. In answer to paragraph 6. Defendants admit that Herbert Aigner, Al Larson, Raymond Lebeau and Edward Olsen are members of the Board of Trustees of the Village of Schaumburg.

Defendants aver that James Rogers and Nels Hornstrom are no longer members of the Board of Trustees of said Village.

7. Defendants admit the allegations of paragraph 7. of said Amended Complaint.

Count I

FACTS

8. In answer to paragraph 8. Defendants admit that the Village enacted Ordinance No. 1052 on March 12, 1974, but aver that said Ordinance has now been codified as part of the Schaumburg Village Code, adopted in 1975. Defendants aver that said Ordinance speaks for itself and requires a permit application to be made to the Village Clerk.

9. In answer to paragraph 9. Defendants say that they have no knowledge sufficient to form a belief as to the truth of the allegations therein contained and neither admit nor deny said allegations, but say that said allegations are irrelevant and immaterial for the reason that as appears on the face of said Complaint no demand or application for permit was made on or after November 15, 1977.

10. In answer to paragraph 10. Defendants admit that Section 22-1 - 22-14 regulate peddlers and solicitors in the Village of Schaumburg, but aver that the Plaintiff herein purports to be a charitable organization and is therefore subject to the provisions of Section 22-19 through Section 22-24 of the Schaumburg Village Code.

11. In answer to paragraph 11. of said Amended Complaint Defendants admit that present Chapter 22 of the Schaumburg Village Code consists of former Ordinance 1103 and former Ordinance 1052, but aver that Ordinance 1103 which was attached to CBE's original complaint does not purport to regulate a charitable organizations or organizations of the character of CBE.

12. Defendants admit the allegations of paragraph 12.

13. Defendants admit the allegations of paragraph 13.

14. In answer to paragraph 14. Defendants say that the CBE has heretofore requested permission to canvass in the Village of Schaumburg, but deny said request has persisted since April of 1973.

15. In answer to paragraph 15. Defendants say that they are unable to answer with certainty whether a final request for solicitation was dated January 22, 1976.

16. In answer to paragraph 16. Defendants admit that any requests have been denied, but aver that the Plaintiff, CBE has been informed of the requirements of the Ordinance and ask to submit documentation in support of their application in accordance with the Ordinance.

17. In answer to paragraph 17. Defendants deny that the Schaumburg Village Board has acted without legal authority or is arbitrarily and capriciously denied the Plaintiff's application for permit. Defendants say that the Village stands ready to issue a permit if the Plaintiff or any other applicant meets the requirements of the Village Code and avers that the acts of the Village Board have been in accordance with law and have not been arbitrary or capricious.

18. In answer to paragraph 18. Defendants aver that if Plaintiffs apply for such permits and meet the requirements of said Ordinances of the Village of Schaumburg, permits will be granted.

19. In answer to paragraph 19. Defendants deny that the refusal by Village of Schaumburg was without good cause shown and aver that good cause was the failure to comply with valid Ordinances of the Village of Schaumburg. Defendants further aver that no hearing was ever requested and that no hearing is required under the Ordinances of the Village of Schaumburg.

20. In answer to paragraph 20. Defendants deny that each Ordinance and specifically Section Three of Ordinance 1052

and Section 22-20 of Chapter 22 are so strict, odious or vague as to be in violation of Plaintiffs constitutional rights. Defendants further aver that said Ordinances and each and every provision thereof are in all respects a valid and constitutional exercise of a police power vested in the Village of Schaumburg under the constitution and laws of the State of Illinois.

21. In answer to paragraph 21. Defendants deny that the Village of Schaumburg Village Board does not uniformly enforce the provisions of the 75% test and say that said allegations are nothing but the inaccurate and totally unsupported conclusions of the pleader.

22. In answer to Paragraph 22. Defendants deny that other charitable organizations are not required to submit information demanded by the Ordinance and deny that the Plaintiffs rights to equal protection of the laws and due process have been violated.

23. In answer to paragraph 23. Defendants deny that the Plaintiffs are under imminent threat of arrest and prosecution by the Chief of Police of the Village of Schaumburg. Defendants further aver however, that if Plaintiffs violate municipal ordinances, they as all other persons who violate the ordinances of the Village of Schaumburg will be prosecuted for such ordinance violations.

24. In answer to paragraph 24. Defendants say that the adoption of said Ordinance was undertaken pursuant to the authority vested in the corporate authorities of the Village of Schaumburg by the Constitution and Laws of the State of Illinois and further aver that the Defendants possess the authority vested in them as Trustees of the Village of Schaumburg.

25. In answer to paragraph 25. Defendants admit that all acts taken by them were taken pursuant to the authority vested in the Defendants and the Village of Schaumburg by the Constitution and Laws of the State of Illinois, but deny that said acts were merely under Color of Law and aver that all acts taken

were in full compliance with the valid constitutional provisions and statutes of the State of Illinois and the valid Ordinances of the Village of Schaumburg.

26. In answer to paragraph 26. Defendants deny each and every allegation of said paragraph 26. Defendants specifically deny that the Plaintiffs were and are further being subjected to a deprivation of their right to free speech, freedom of association, or to access to the Courts. Defendants deny that the Plaintiffs have been denied equal protection of the law or have been denied life, liberty and property without due process of law and deny that any Plaintiffs have been denied rights, privileges or immunities in violation of the Fourteenth Amendment.

27. In answer to paragraph 27. Defendants deny that the Plaintiffs interests have been or will continue to be irreparably harmed, adversely affected by any of the acts of the Defendants and further deny that there have been any unlawful acts of the Defendants.

28. Defendants deny the allegations of paragraph 28.

WHEREFORE, Defendants respectfully pray that this Honorable Court dismiss Count I of said Amended Complaint for failure to state a cause of action and for failure to set forth facts showing wherein this Court has jurisdiction to grant any relief requested.

Count II

29. In answer to paragraph 29. Defendants reallege the answers to paragraphs 8. and 9. of Count I.

30. In answer to paragraph 30. Defendants admit that said Ordinance 1052 requires a permit, but denies that said permit is issued at the arbitrary discretion of the Village Board and avers that the Village Board is without authority to deny a permit to any person or organization which meets the requirements of said Ordinance.

31. In answer to paragraph 31. Defendants deny that said Ordinance, specifically Section Three thereof, is so strict, odious

or vague as to be in violation of Plaintiffs constitutional rights and aver that said Ordinance and specifically Section Three thereof is in all respects a valid and constitutional exercise of the police power of the Village of Schaumburg granted pursuant to the Constitution and Laws of the State of Illinois. Defendants further aver that the standards set forth in said Ordinance are in all respects valid, specific and definite and are reasonably related to the objectives of the Ordinance.

32. In answer to paragraph 32. Defendants deny that said Ordinance and threat of enforcement constitutes a prior restraint upon, or an unreasonable interference with the exercise of Plaintiffs' rights to freedom of speech, freedom of press, freedom of association and rights to access to the courts and deny that the Ordinance in any way violates the First Amendment to the Constitution of the United States or the Fourteenth Amendment to the Constitution of the United States.

33. In answer to paragraph 33. Defendants deny that the Plaintiffs are under imminent threat of arrest and prosecution by the Chief of Police of the Village of Schaumburg, but aver that in the event the Plaintiffs seek to violate the ordinances of the Village of Schaumburg they, like all other persons violating the ordinances of the Village of Schaumburg, will be prosecuted.

34. In answer to paragraph 34. Defendants deny that the Plaintiffs interests have been or will continue to be irreparably harmed or adversely affected or aggrieved by the foregoing ordinance and deny that said ordinance is unlawful.

35. In answer to paragraph 35. Defendants deny that the Plaintiffs have no adequate remedy at law.

WHEREFORE, Defendants respectfully pray that Count II of said Amended Complaint be dismissed for failure to state a cause of action and for failure to show wherein federal jurisdiction may properly be invoked.

Count III

36. In answer to paragraph 36. Defendants reallege the answer to paragraph 10. of Count I.

37. In answer to paragraph 37. Defendants admit that no solicitation to obtain donations of money may take place without first having obtained a permit as required by ordinance, but deny that the permit is issued at the arbitrary discretion of the Schaumburg Village Board. Defendants aver that all persons meeting the requirements of said ordinance are entitled to permits and are so issued permits by the Village of Schaumburg.

38. In answer to paragraph 38. Defendants deny that said ordinance and specifically Section Three is so strict, odious or vague as to be in violation of the Plaintiffs constitutional rights and aver that said ordinance is in all respects a valid and constitutional exercise of the police power vested in the Village of Schaumburg by the Constitution and Laws of the State of Illinois.

39. In answer to paragraph 39. Defendants deny that such ordinance and the threat of enforcement constitutes a prior restraint upon, and an unreasonable interference with the exercise of Plaintiffs' rights to freedom of speech, press and association and access to the courts and deny the allegations of paragraph 39. and specifically deny that said ordinance violates in any manner the First or Fourteenth Amendment to the Constitution of the United States.

40. In answer to paragraph 40. Defendants deny that the Plaintiffs are under imminent threat of arrest and prosecution by the Chief of Police of the Village of Schaumburg, but aver that if Plaintiffs like all other persons, violate the ordinances of the Village of Schaumburg, they will be subject to prosecution.

41. Defendants deny the allegations of paragraph 41. and specifically deny that the Plaintiffs' interests have been or will continue to be irreparably harmed, adversely affected or

aggrieved by said ordinance and deny that said ordinance is unlawful.

42. Defendants deny that the Plaintiffs have no adequate remedy at law.

43. As affirmative defense the Plaintiffs say on information and belief that the CBE is primarily devoted to raising funds for the benefit and salary of its employees and that its charitable purposes are negligible as compared with the primary objective of raising funds. Defendants further say and information and belief that more than 60% of the funds collected have been spent for benefits of employees and not for any charitable purposes.

In support of said allegations the Defendants submit herewith as Exhibit A an article appearing in the Suburban Trib for Southwest Cook County on Wednesday, November 10, 1976.

44. As further and affirmative defenses the Defendants say that the ordinances of the Village of Schaumburg relating to charitable organizations and the solicitation of funds are in all respects valid and constitutional exercises of a legislative authority vested in the President and Board of Trustees by the Constitution and Statutes of the State of Illinois.

45. Defendants further aver that there is no absolute right under the Federal Constitution to enter upon the private premises of another and knock on a door for any purposes and the police power permits reasonable regulation of public safety. That door to door canvassing and solicitation are not immune from regulation under the State's police power whether the purpose of the regulations is to protect from danger or to protect the peaceful enjoyment of the home. That the ordinances of the Village of Schaumburg are so directed.

WHEREFORE, it is respectfully prayed that Count III of said Complaint be dismissed for failure to state a cause of action and for failure to set forth facts sufficient to envoke the jurisdiction of the Federal Courts.

VILLAGE OF SCHAUMBURG, et al.
Defendants
By JACK M. SIEGEL,
Their Attorney

APPENDIX C

Peddlers and Solicitors

CHAPTER 22.

PEDDLERS AND SOLICITORS.

For state law as to transient merchants generally, see Ill. Rev. Stat., ch. 121½, §§ 158 to 165. As to itinerant merchants by vehicle, see Ill. Rev. Stat., ch. 121½, §§165.1 to 165.17.

As to citations in lieu of complaint for certain offenses, see §§ 12-2 to 12-5 of this Code. As to licenses generally, see ch. 17. As to use of noise devices on vending vehicles, see § 18-4. As to noises generally, see § 20-41. As to weights and measures generally, see ch. 32.

Article I. In General.

§§ 22-1 to 22-5. Reserved.

Article II. For Profit Peddlers and Solicitors.

§ 22-6. Definitions.
§ 22-7. Licenses—Required.
§ 22-8. Same—Applications; disposition of fee if license refused on moral grounds; registration book.
§ 22-9. Same—Investigation and certification of applicant.
§ 22-10. Same—Fees.
§ 22-11. Same—Revocation.
§ 22-12. Fraud; sale of goods, etc., not covered by license.
§ 22-13. Hours of operation.
§ 22-14. Limitations on parking.
§ 22-15. Notices of refusal of invitation.
§ 22-16. Conduct.
§ 22-17. Erection of signs at village limits.
§ 22-18. Penalties.

Article III. Charitable Organizations.

§ 22-19. Definitions.
§ 22-20. Permits—Required; contents of application.
§ 22-21. Same—Submission and verification of applications; issuance.
§ 22-22. Same—Fee.
§ 22-23. Indicted or convicted felons or solicitors.
§ 22-24. Hours; entering premises posted for "no soliciting."

Article I. In General.

Secs. 22-1 to 22-5. Reserved for future legislation.

Article II. For Profit Peddlers and Solicitors.

Sec. 22-6. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Peddler. Any person who, going from place to place, shall at retail sell, offer for sale, sell and deliver, barter or exchange any goods, wares, merchandise, wood, oil, fish, fruits, vegetables, country produce or any other article or thing whatsoever or any service from a vehicle or otherwise. It shall not include a serviceman who, responding to a prior call, sells replacement merchandise.

Solicitor. Any person who, going from place to place, without prior appointment or pre-arrangement with the customer, shall take orders for future delivery at retail of any merchandise or other article or thing, or any service. (Ord. No. 1103, § 1.)

Sec. 22-7. Licenses—Required.

No person shall engage in the business of a peddler or solicitor within the village without first having obtained a license therefor as provided in this article. (Ord. No. 1103, § 2.)

Sec. 22-8. Same—Applications; disposition of fee if license refused on moral grounds; registration book.

An application for a peddler's or solicitor's license shall be made to the village collector in conformity with the general requirements of this Code and other village ordinances relating to applications for licenses. Such applications shall also set forth the number of vehicles, if any, intended to be operated, the kind of merchandise to be peddled or offered for order, the permanent address of the applicant, the name of the partnership, corporation or proprietorship for whom the applicant works, the name of the supervisor of the applicant, the telephone number of the parent firm, and cities of previous solicitation; and further, whether such applicant has ever had a revocation of any peddler's or solicitor's licenses, whether he has ever been convicted for a violation of similar peddlers and solicitors ordinances, whether he has ever been arrested or convicted of a misdemeanor or felony, and if so, why. Each application shall be accompanied by the annual fee as hereinafter prescribed. Should the application be refused because the applicant upon investigation is not found to be a person of good and moral character and reputation, as based on answers given on the license application, the license fee shall be deemed to have covered the cost of investigation and shall not be returned to the applicant. The applicant shall register in a book provided for such purpose in the office of the village collector. (Ord. No. 1103, § 3.)

Sec. 22-9. Same—Investigation and certification of applicant.

The chief of police shall, upon request from the village collector, make or cause to be made an investigation to determine the character and reputation of the applicant. No license shall be issued to any applicant who is not found to be a person of good character and reputation or to any firm, corporation, partnership or association which is not represented in the village by a person found to be of good character and reputation. The chief

of police shall certify to the village collector the issuance or denial of a permit under the provisions of this article within thirty days of the application. (Ord. No. 1103, § 4.)

Sec. 22-10. Same—Fees.

The annual fee for a peddler's or solicitor's license shall be ten dollars; except, that if a peddler or solicitor uses a vehicle other than a private automobile in his business, the annual fee shall be twenty-five dollars per vehicle. (Ord. No. 1103, § 5.)

Sec. 22-11. Same—Revocation.

Any such license may be revoked by the village president because of any violation of this article or of any other provision of this Code or other ordinances of the village or of any state or federal law or whenever the registrant shall cease to possess the qualifications and character required in this article for the original registration. (Ord. No. 1103, § 12.)

Sec. 22-12. Fraud; sale of goods, etc., not covered by license.

It shall be unlawful for any peddler or solicitor to cheat, deceive or fraudulently misrepresent, whether through himself or through an employee, while acting as a peddler or solicitor in the village or to barter, sell or peddle any goods, merchandise or wares other than those specified in his application for a license. (Ord. No. 1103, § 6.)

Sec. 22-13. Hours of operation.

No soliciting or peddling shall be permitted before the hour of 9:00 A.M., or after the hour of 6:00 P.M. within the village, and no peddling or soliciting shall be conducted on Sundays; provided, that vending of food from trucks on the public ways shall be on all days between sunup and sunset. (Ord. No. 1103, § 7.)

Sec. 22-14. Limitations on parking.

No peddler or solicitor may park on public property in a given place for longer than fifteen minutes after the time of his sale or solicitation of an order at that place, and after the expiration of such fifteen minutes, he shall move on to a different location which is at least one village block away. (Ord. No. 1103, § 8.)

Sec. 22-15. Notices of refusal of invitation.

Notice of the determination of the occupant's refusal of invitation to any solicitors or peddlers shall be given in the following manner:

A weatherproof card, at least three inches by four inches in size, shall be exhibited upon or near the main entrance door to the residence, indicating the determination by the occupant, containing the applicable words, as follows:

"NO SOLICITORS OR PEDDLERS INVITED."

The letters shall be at least one-third inch in height. For the purpose of uniformity, the cards shall be provided by the village collector to persons requesting, at the cost thereof.

Such card so exhibited shall constitute sufficient notice to any solicitor or peddler of the determination of the occupant of the residence of the information contained thereon. (Ord. No. 1103, § 9.)

Sec. 22-16. Conduct.

It shall be the duty of every solicitor or peddler, upon going onto any premises in the village upon which a residence as herein defined is located, to first examine the notice provided for in this article, if any is attached, and be governed by the statement contained on the notice. If the notice states "no solicitors or peddlers invited," then the solicitor or peddler, whether registered or not, shall immediately and peacefully depart from the premises.

Any solicitor or peddler who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant. (Ord. No. 1103, § 10.)

Sec. 22-17. Erection of signs at village limits.

The director of public works is hereby directed to post appropriate signs at the limits of the village with the following language;

"SOLICITORS AND PEDDLERS MUST BE LICENSED AND REGISTERED. APPLY AT SCHAUMBURG MUNICIPAL BUILDING, 101 SCHAUMBURG COURT."

Sec. 22-18. Penalties.

Any person violating the provisions of this article shall be fined not more than five hundred dollars for each such offense. (Ord. No. 1103, § 13.)

Article III. Charitable Organizations.

For state law as to solicitation of funds for charitable purposes, see Ill. Rev. Stat., ch. 23, § 5101 et seq.

Sec. 22-19. Definitions.

For the purpose of this article, the following words and phrases shall have the following meanings unless a different meaning is required by the context:

Charitable organization. Any benevolent, philanthropic, patriotic, not-for-profit, or eleemosynary group, association or corporation, or such organization purporting to be such, which solicits and collects funds for charitable purposes.

Charitable purpose. Any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose.

Contribution. The promise or grant of any money or property of any kind or value, including payments for literature in excess of the fair market value of said literature. (Ord. No. 1052, § 2.)

Sec. 22-20. Permits—Required; contents of application.

Every charitable organization, which solicits or intends to solicit contributions from persons in the village by door-to-door solicitation or the use of public streets and public ways, shall prior to such solicitation apply for a permit. Said application shall be made to the village clerk and shall include the following information:

(a) The name of the organization and the name under which it intends to solicit contributions.

(b) The name and address of the person in charge of solicitation in the village.

(c) The names and addresses of all the persons who will solicit contributions in the village.

(d) The dates and times of day such solicitations are to be made and the geographic area within the village wherein such solicitation shall be conducted at a particular time and day.

(e) A written statement of recent date by the Attorney General of Illinois that the organization has complied with the provisions of "An Act to Regulate Solicitation and Collection of Funds for Charitable Purposes," Illinois Revised Statutes, chapter 23, section 5101, and such statute as it may hereafter be amended.

(f) Satisfactory proof that the organization is a tax-exempt organization under the Internal Revenue Code of the United States, section 501(c)(3).

(g) Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization. For such purposes, the following items shall not be deemed to be used for the charitable purposes of the organization, to wit;

(1) Salaries or commissions paid to solicitors;

(2) Administrative expenses of the organization, including, but not limited to, salaries, attorneys' fees, rents, telephone, advertising expenses, contributions to other organizations and persons, except as a charitable contribution and related expenses incurred as administrative or overhead items.

For the purpose of satisfying the requirements of subparagraph (g), the organization shall submit a certified audit of the last full year of operations, indicating the distribution of funds collected by the organization, or such other comparable evidence as may demonstrate the fact that at least seventy-five per cent of the funds collected are utilized directly and solely for the charitable purpose of the organization. (Ord. No. 1052, § 3.)

Sec. 22-21. Same—Submission and verification of applications; issuance.

All applications shall be submitted to the village clerk and shall be verified under oath by a responsible officer of the soliciting organization. All completed applications shall be submitted by the village clerk to the village board. If the village board shall find and determine that all requirements of this article have been met, a permit shall be issued specifying the dates and times at which solicitation may take place. (Ord. No. 1052, § 7.)

Sec. 22-22. Same—Fee.

Each application for a charitable solicitation permit shall be accompanied by a fee in the amount of ten dollars. (Ord. No. 1052, § 6.)

Sec. 22-23. Indicted or convicted felons as solicitors.

It shall be unlawful for any charitable organization to utilize as a solicitor any person who has been convicted of a felony or is presently under indictment for a felony. (Ord. 1052, § 5.)

Sec. 22-24. Hours; entering premises posted for "no soliciting."

No permit issued under the provisions of this article shall permit solicitation before the hour of 9:00 A.M. and after the hour of 6:00 P.M., or on Sunday. Nothing herein provided shall permit a solicitor to go upon any premises which has posted a sign indicating "no solicitors or peddlers invited." (Ord. No. 1052, § 4.)